

Indiana Department of State Revenue

Revenue Ruling #2007-01ST

January 18, 2007

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Sales of Memberships

Authority: IC 6-2.5-4-1, IC 6-2.5-2-1, 45 IAC 2.2-4-2, IC 6-2.5-3-2

The taxpayer requests the Department to rule whether its sales of memberships are subject to Indiana sales/use tax.

STATEMENT OF FACTS

The taxpayer is a Delaware corporation authorized to do business in Indiana. The taxpayer is in the business of providing security. To enroll in the taxpayer's security program its customers must supply certain information to the taxpayer and be approved for membership in the taxpayer's security program. When a customer becomes a member the taxpayer supplies an identification card to the member. No separate fee is charged to the member for the identification card, only a flat membership fee.

DISCUSSION

IC 6-2.5-4-1 states a retail transaction occurs when a person acquires tangible personal property for resale and transfers that tangible personal property to another person for consideration. IC 6-2.5-2-1 provides that retail transactions are subject to sales tax. Conversely, transactions involving services/labor only, are not subject to sales/use tax unless specifically stated so in the Indiana Sales/Use Tax Code.

Here, the taxpayer is transferring tangible personal property (identification cards) to expedite its security program which is a non-taxable service. The taxpayer's business is providing security, not identification cards. 45 IAC 2.2-4-2 addresses this issue by stating when an inconsequential amount of tangible personal property is transferred as an incident to the rendering of services, the transaction is still a service transaction and is not subject to sales/use tax. "Inconsequential tangible personal property" is defined as property whose price is not to exceed 10% of the service charge. The taxpayer's

identification cards satisfy this definition, therefore, the sales of memberships for its security program are not subject to Indiana sales/use tax.

Any tangible personal property, however, including the identification cards, used by the taxpayer in the State of Indiana for the provision of its security program is subject to sales/use tax to be paid by the taxpayer pursuant to IC 6-2.5-3-2.

RULING

The Department rules the taxpayer's sales of memberships are not subject to sales/use tax. Any tangible personal property used in the State of Indiana by the taxpayer in the provision of its security program is subject to sales/use tax to be paid by the taxpayer.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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